

# McNAIR & SANFORD, P.A.

ATTORNEYS AND COUNSELORS AT LAW

MADISON OFFICE BUILDING/SUITE 400  
1155 FIFTEENTH STREET, NORTHWEST  
WASHINGTON, DC 20005

TELEPHONE 202/659-3900  
FACSIMILE 202/659-5763

CHARLESTON OFFICE  
140 EAST BAY STREET  
POST OFFICE BOX 1431  
CHARLESTON, SC 29402  
TELEPHONE 803/723-7831  
FACSIMILE 803/722-3227

COLUMBIA OFFICE  
NATIONSBANK TOWER  
1301 GERMAIS STREET  
POST OFFICE BOX 11390  
COLUMBIA, SC 29211  
TELEPHONE 803/799-9800  
FACSIMILE 803/799-9804

GEORGETOWN OFFICE  
121 SCREVEN STREET  
POST OFFICE DRAWER 418  
GEORGETOWN, SC 29442  
TELEPHONE 803/546-6102  
FACSIMILE 803/546-0096

GREENVILLE OFFICE  
NATIONSBANK PLAZA  
SUITE 601  
7 NORTH LAURENS STREET  
GREENVILLE, SC 29601  
TELEPHONE 803/271-4940  
FACSIMILE 803/271-4015

RALEIGH OFFICE  
RALEIGH FEDERAL BUILDING  
ONE EXCHANGE PLAZA  
SUITE 810  
POST OFFICE BOX 2447  
RALEIGH, NC 27602  
TELEPHONE 919/890-4180  
FACSIMILE 919/890-4180

SPARTANBURG OFFICE  
SPARTAN CENTRE/SUITE 306  
101 WEST ST. JOHN STREET  
POST OFFICE BOX 5137  
SPARTANBURG, SC 29304  
TELEPHONE 803/542-1300  
FACSIMILE 803/542-0705

April 29, 1994

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: MM Docket No. 93-107  
Channel 280A  
Westerville, Ohio

Dear Mr. Caton:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and eleven (11) copies of its "Reply to Opposition of Ringer."

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By:   
Stephen T. Yelverton

Enclosure

B:CATON.138

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In re Applications of:

DAVID A. RINGER

et al.,

Applications for Construction  
Permit for a New FM Station,  
Channel 280A, Westerville,  
Ohio

MM Docket No. 93-107

File Nos. BPH-911230MA

through

BPH-911231MB

To: The Review Board

REPLY TO OPPOSITION OF RINGER

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By: \_\_\_\_\_

Stephen T. Yelverton  
Attorneys for Ohio Radio  
Associates, Inc.  
1155 15th Street, N.W., Suite 400  
Washington, D.C. 20005  
Telephone: (202) 659-3900

April 29, 1994

B:CATON.138

### REPLY TO OPPOSITION OF RINGER

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Sections 1.229 (d) and 1.294 (c)(1) of the Commission's Rules, hereby submits this reply to opposition. On April 12, 1994, ORA filed a supplement to a motion to enlarge the issues against David A. Ringer ("Ringer"). On April 19, 1994, Ringer filed an opposition thereto, which he also styled as a motion to strike. Pursuant to Section 1.294 (b) of the Rules, this reply should also be considered as a timely filed opposition to the motion to strike. In reply to the opposition, ORA submits the following comments.

Ringer previously disclosed during discovery in this proceeding that he had received a purported tower site agreement in December 1991 from Mid-Ohio Communications, Inc. A December 1991 letter from Mid-Ohio states in pertinent part that it is "willing to negotiate" and has an "intent to negotiate" with Ringer as to use of its transmitting tower and facilities.

In an April 1, 1994, submission, Ringer disclosed a letter from Mid-Ohio, dated March 2, 1994. Therein, Mid-Ohio confirmed that its December 1991 letter was only a "willingness to negotiate" as to a "possible" lease of the tower site. Thus, under long-established Commission policy, Ringer never had "reasonable assurance" of Mid-Ohio's tower site. Progressive Communications, Inc., 3 FCC Rcd 5758, 5759, para. 9 (Rev. Bd. 1988), "reasonable assurance" of the availability of a tower site requires more than a vague "willingness to deal" on the part of the site owner.

In his opposition, Ringer contends that ORA's supplement should not be considered because it does not add any new information of decisional significance. However, this contention is erroneous. The March 1994 letter from Mid-Ohio confirms that in December 1991 it was only willing to deal with Ringer in the future and did not have a firm agreement with him. This letter is unquestionably new information. It is of decisional significance because it is a candid and unrehearsed characterization by Mid-Ohio of what it understood its relationship with Ringer was --- nothing more than a willingness to deal.

Ringer contends that ORA is just playing a game of semantics. However, the words or semantics cited by ORA are those of Mid-Ohio. The words or semantics

Mid-Ohio uses to characterize its past relationship with Ringer are the exact words which the Commission has determined as not constituting "reasonable assurance" of the availability of a tower site. Ringer's actual quarrel is not with ORA, but rather with Mid-Ohio's characterization and with Commission policy.

Ringer argues that it was not required to have a "binding commitment" from Mid-Ohio. However, ORA never contended that such was required. Rather, it contended that Ringer's relationship with Mid-Ohio was nothing more than a willingness to deal in the future, which falls short of the "reasonable assurance" standard.

Ringer suggests that, merely because Mid-Ohio recently sold its proposed tower site, it does not follow that it did have "reasonable assurance" in December 1991. However, ORA never made this contention. Rather, it only noted that Mid-Ohio's characterization of its past relationship with Ringer arose in the context of its recent sale of the tower site.

It appears that Ringer is making "straw man" arguments in order to confuse and to divert attention from the real issue --- Mid-Ohio has now candidly and unquestionably stated what its actual relationship with Ringer was. That relationship did not met the Commission's test for "reasonable assurance."

WHEREFORE, in view of the foregoing, ORA requests that a tower site qualifications issue be specified against Ringer based upon the fact that he never had "reasonable assurance" of a tower site from Mid-Ohio.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: 

Stephen T. Selverton  
Attorneys for Ohio Radio  
Associates, Inc.  
1155 15th St., N.W., Suite 400  
Washington, D.C. 20005  
Telephone: 202-659-3900

April 29, 1994

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**CERTIFICATE OF SERVICE**

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 29th day of April, 1994, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Reply to Opposition of Ringer" to the following:

Joseph A. Marino, Chairman\*  
Review Board  
Federal Communications Commission  
Room 211  
2000 L Street, N.W.  
Washington, D.C. 20554

James Shook, Esquire  
Hearing Branch  
Federal Communications Commission  
Room 7212  
2025 M Street, N.W.  
Washington, D.C. 20554

Arthur V. Belenduik, Esquire  
Smithwick & Belenduik, P.C.  
1990 M Street, N.W.  
Suite 510  
Washington, D.C. 20036  
Counsel for David A. Ringer

James A. Koerner, Esquire  
Baraff, Koerner, Olender & Hochberg, P.C.  
5335 Wisconsin Avenue, N.W.  
Suite 300  
Washington, D.C. 20015-2003  
Counsel for ASF Broadcasting Corp.

Eric S. Kravetz, Esquire  
Brown, Finn & Nietert, Chartered  
1920 N Street, N.W.  
Suite 660  
Washington, D.C. 20036  
Counsel for Wilburn Industries, Inc.

Dan J. Alpert, Esquire  
Law Office of Dan J. Alpert  
1250 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
Counsel for Shellee F. Davis

  
Stephen T. Yelverton

\*Hand Delivery